TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 422.

A. S. CORE AND BENJAMIN S. COMPTON, PLAINTIFFS IN ERROR,

vs.

JOHN F. VINAL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

FILED OCTOBER 13, 1883.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 At a circuit court of the United States for the district of West Virginia, continued and held at Parkersburg, in said district, on Tuesday, the tenth day of January, A. D. 1882—present, the Honorable John J. Jackson, judge of the district court of the United States for the district of West Virginia, and as such associate judge of the circuit court of the United States for the district of *of* West Virginia—among others, the following order was made and entered of record, to wit:

Trespass on the Case.

JOHN F. VINAL *vs.* A. S. CORE & B. S. COMPTON.

This day came the defendants, A. S. Core and B. S. Compton, by their attorney, W. S. Sands, and presented to the court an attested copy of the record in the above-entitled cause from the circuit court of Wood county, West Virginia, and upon motion of the said defendants, by their attorney, it is ordered that said record be filed and said cause be docketed in this court for further proceedings to be had therein. Thereupon the plaintiff, by his attorney, appeared and moved the court to remand said cause to the said circuit court of Wood county, the hearing whereof is continued until a future day.

2 The record referred to in the foregoing order is in words and figures following, to wit:

Pleas before the circuit court of Wood county, at the court-house thereof, on the 24th day of August, A. D. 1881.

Be it remembered that heretofore, to wit, at rules held in the clerk's office of the circuit court of Wood county, on the first Monday of July, 1876, came John F. Vinal and filed his declaration in case against Andrew S. Core and B. S. Compton, which declaration is in the words and figures following, to wit:

Declaration.

THE STATE OF WEST VIRGINIA, *Wood County,* } *To wit:*

In the Circuit Court of said County.

John F. Vinal complains of Andrew S. Core and Benjamin S. Compton, who have been duly summoned, &c., of a plea of trespass on the case.

For that whereas the plaintiff now is a good, true honest, and just citizen of this State, and hath always behaved and conducted himself as such, and hath not ever been guilty or, until

3 the time of the several grievances hereinafter next mentioned by the said defendants, been suspected to have been guilty of felony, or of any other such crime, by means whereof the plaintiff, before the committing of the said several grievances by the said defendants, as hereinafter mentioned, had deservedly obtained and acquired the good opinion and credit of all his good and worthy

neighbors, to wit, at the county aforesaid. Yet the said defendants, well knowing the premises, but contriving and maliciously intending to injure the plaintiff in his aforesaid good name, fame, and credit, and to bring him into public scandal, infamy, and disgrace, and to cause the plaintiff to be arrested and imprisoned for a long space of time, and thereby impoverish, oppress, and wholly ruin him, heretofore, to wit, on the 5th day of May, 1876, at Ritchie county, in the State aforesaid, to wit, at the county aforesaid, went and appeared before one James McKinney, Esquire, one of the justices of the peace in and for said county of Ritchie, and acting as such, he having then and there jurisdiction to hear and examine into informations and complaints of felony, and to commit or bail persons charged therewith, and then and there, before the said James McKinney, Esquire, so being such justice of the peace as aforesaid,

4 at the county of Ritchie aforesaid, to wit, at the county aforesaid, falsely and maliciously, and without any reasonable or probable cause whatever, charged the said plaintiff with having feloniously stolen, taken, and carried away, on the 29th day of April, 1876, at the said county of Ritchie, forty-one barrels and thirty-seven gallons, thirty and thirty and one-half gravity, of the value of one hundred and fifty dollars, of the goods and chattels of the said Andrew S. Core, and upon such charge the said defendants falsely and maliciously, and without any reasonable or probable cause whatsoever, caused and procured the said James McKinney, Esquire, so being such justice of the peace as aforesaid, to make and grant his certain warrant, under his hand, to apprehend the said plaintiff and bring — before the said justice, to answer said complaint and charge, and to be dealt with in relation thereto according to law for said supposed offense.

And the said defendants, under and by virtue of said warrant, afterwards, to wit, on the 9th day of May, 1876, at the county of Ritchie, to wit, at the county aforesaid, wrongfully and unjustly, and without any reasonable or probable cause whatsoever, caused and procured the said plaintiff to be arrested by his body, and to be taken and imprisoned, and kept and detained in custody for a long space of time, to wit, for the

5 space of forty-eight hours then next following, and until they, the said defendants, maliciously and without any probable or reasonable cause whatsoever, caused and procured the said plaintiff to be carried and conveyed in custody before the said James McKinney, Esquire, so being such justice as aforesaid, to be examined before the said justice touching and concerning the said supposed crime, and the said justice, on the said 9th day of May, 1876, at the county of Ritchie aforesaid, to wit, at the county aforesaid, not having time to complete the examination of the said plaintiff upon the said charge, adjourned the further examination of the plaintiff upon the said charge to and until the 10th day of May, 1876, at the said county of Ritchie, to wit, at the county aforesaid, and the said defendants then and there falsely and maliciously, without any reasonable or probable cause whatsoever, caused and procured the said plaintiff to be imprisoned and to be kept and de-

tained in custody for a long space of time, to wit, for the space of twenty-four hours then next following, until the said defendants afterwards, to wit, on the said 10th day of May, 1876, at Ritchie county, to wit, at the county aforesaid, falsely and maliciously and without any reasonable or probe*r*able cause whatsoever, caused and procured the said plaintiff to be again taken, carried, and conveyed in custody before the said justice of Ritchie county aforesaid, to be further examined before the said justice touching and con-
6 cerning the said supposed offense, then and there, to wit, on the said 10th day of May, 1876, at the county of Ritchie, to wit, at the county aforesaid, adjudged and determined that the said plaintiff was not guilty of the said supposed offense; that there was not sufficient cause for charge*i*ng the said plaintiff with the said offense, and then and there caused the said plaintiff to be discharged out of custody, fully acquitted and discharged of the said supposed offense, and the said defendants have not further prosecuted their said charge and complaint, but have deserted and abandoned the same, and the said charge and complaint and prosecution is wholly ended and determined, to wit, at the county aforesaid.

And whereas also the defendant-, further continuing and maliciously intending as aforesaid, heretofore, to wit, on the 5th day of May, 1876, at Ritchie county, to wit, at the county aforesaid, falsely and maliciously, and without any reasonable or probe*r*able cause whatsoever, charged the said plaintiff with having committed a certain offense punishable by law, to wit, grand larceny, and upon such last-mentioned charge the said defendants then and there combined and conspired together and falsely and maliciously caused and procured the said plaintiff to be apprehended, arrested, [and] *by* his body to be imprisoned, and to be kept and detained in custody for a
7 long space of time, to wit, for the space of seventy-two hours, then next following, and to be *and to be* examined by and before James McKinney, a justice of the peace of said county of Ritchie, to wit, at the county aforesaid, touching said charge of grand larceny, and, at the expiration of said period and said examination, the said plaintiff was fully and duly discharged and acquitted of the said last-mentioned offense, to wit, at the county aforesaid, and the said prosecution therefore hath not been further prosecuted by the said defendants, but they have deserted and abandoned the same, and the same is wholly ended and determined, to wit, at the county aforesaid.

By means of which said several premises the said plaintiff has been and is greatly injured in his said credit and reputation, and brought into public scandal, infamy, and disgrace with and amongst all his neighbors and other good and worthy citizens of the State, to whom his innocence in the premises was unknown, — have on occasion of the premises suspected and believed, and still do suspect and believe, that the said plaintiff hath been and is guilty of the said felony; and also the said plaintiff hath, by reason of the premises, suffered great anxiety and pain of body and mind, and hath been forced and obliged to lay out and expend large sums of money, in the whole amounting to a large sum of money, to wit, the

8 sum of $1,000, in and about the procuring his discharge from said custody and imprisonment and defending of himself in the premises and the manifestation of his innocence in that behalf, and hath been greatly hindered, delayed, and prevented, by reason of the premises, from following and transacting his lawful and necessary affairs and business for a long time, to wit, for the space of one month, and also, by means of the premises, the plaintiff hath been and is otherwise greatly injured in his credit and circumstances as a man of business and integrity in his affairs, to wit, at the county aforesaid, to the damage of the said plaintiff of $20,000; and therefore he brings this his suit, &c.

J. B. JACKSON,
COLE & MERRICK,
JNO. A. HUTCHINSON,
Att'ys for Plaintiff.

Rules.

1876. July rules: *Con fer dec.*

August rules: Narr. filed and 2 pleas in abatement filed by defendant's attorney.

"Plea in Abatement."

In the Circuit Court of Wood Co., State of West Virginia.

ANDREW S. CORE & BENJAMIN S. COMPTON *ads.* JOHN F. VINAL.

In trespass on the case, &c.

9 The said defendant, Andrew S. Core, in his own proper person, comes and says: That the court ought not to have or take further cognizance of the said plaintiff's action aforesaid against him, because he says that at the time of the commencement of the said action or before or since he was not and has not been a resident of said county of Wood, but was at that time, has been ever since, and is at the time of the filing of this plea a resident of the county of Ritchie, in said State of West Virginia, and that the cause of action for which said plaintiff's action aforesaid is brought or any part thereof did not arise in said county of Wood, but arose in said county of Ritchie, and this he is ready to verify.

Whereupon he prays judgment whether the court can or will take further cognizance of the action aforesaid.

ANDREW S. CORE,
By Counsel.

STATE OF WEST VIRGINIA, *Ritchie County,* } *To wit:*

Andrew S. Core, defendant named in the foregoing plea, being duly sworn, says that the facts and allegations therein contained are true.

A. S. CORE.

Taken, subscribed, and sworn to before me this 1st day of July, 1876.

J. P. STRICKLER,
Notary Public.

"2*d Plea in Abatement.*"

In the Circuit Court of Wood County, State of West Virginia.

ANDREW S. CORE & B. S. COMPTON *vs.* JOHN F. VINAL.

In trespass on the case, &c.

The said defendants, Andrew S. Core and Benjamin S. Compton, in their own proper persons come and say: That this court ought not to have or take further cognizance of the said plaintiff's action aforesaid against them or either of them, because they say that at the time of the commencement of said action or before or since the said defendants or either of them were not and have not been residents of said county of Wood, but the said defendant Core was at that time, has been ever since, and is at the time of filing this plea a resident of the county of Ritchie, in said State of West Virginia, and the said defendant Compton was at that time, has been ever since, and is at the time of filing this plea a resident of the State of Michigan, beyond the limits of said State of West Virginia, and had not at that time or since, and has not at the time of filing
11 this plea, any estate or debts due him in said county of Wood, and that the cause of action for which said plaintiff's action aforesaid is brought, or any part thereof, did not arise in said county of Wood, but arose in said county of Ritchie, and this the said defendants are ready to verify.

Whereupon they pray judgment whether the court can or will take further cognizance of the action aforesaid.

ANDREW S. CORE,
BENJAMIN S. COMPTON,
By Counsel.

STATE OF WEST VIRGINIA, } *To wit:*
Ritchie County, }

Andrew S. Core, defendant named in the foregoing plea, being duly sworn, says that the facts and allegations therein contained are true, as he believes.

A. S. CORE.

Taken, sworn to, and subscribed before me this 3d day of July, 1876.

J. P. STRICKLER,
Notary Public.

And at another day, to wit, at a circuit court continued and held for Wood county, at the court-house thereof, on December 26th, 1876.

8 sum of $1,000, in and about the procuring his discharge from said custody and imprisonment and defending of himself in the premises and the manifestation of his innocence in that behalf, and hath been greatly hindered, delayed, and prevented, by reason of the premises, from following and transacting his lawful and necessary affairs and business for a long time, to wit, for the space of one month, and also, by means of the premises, the plaintiff hath been and is otherwise greatly injured in his credit and circumstances as a man of business and integrity in his affairs, to wit, at the county aforesaid, to the damage of the said plaintiff of $20,000; and therefore he brings this his suit, &c.

J. B. JACKSON,
COLE & MERRICK,
JNO. A. HUTCHINSON,
Att'ys for Plaintiff.

Rules.

1876. July rules: *Con fer dec.*
August rules: Narr. filed and 2 pleas in abatement filed by defendant's attorney.

"Plea in Abatement."

In the Circuit Court of Wood Co., State of West Virginia.

ANDREW S. CORE & BENJAMIN S. COMPTON *ads.* JOHN F. VINAL.

In trespass on the case, &c.

9 The said defendant, Andrew S. Core, in his own proper person, comes and says: That the court ought not to have or take further cognizance of the said plaintiff's action aforesaid against him, because he says that at the time of the commencement of the said action or before or since he was not and has not been a resident of said county of Wood, but was at that time, has been ever since, and is at the time of the filing of this plea a resident of the county of Ritchie, in said State of West Virginia, and that the cause of action for which said plaintiff's action aforesaid is brought or any part thereof did not arise in said county of Wood, but arose in said county of Ritchie, and this he is ready to verify.

Whereupon he prays judgment whether the court can or will take further cognizance of the action aforesaid.

ANDREW S. CORE,
By Counsel.

STATE OF WEST VIRGINIA, *Ritchie County,* } *To wit:*

Andrew S. Core, defendant named in the foregoing plea, being duly sworn, says that the facts and allegations therein contained are true.

A. S. CORE.

10 Taken, subscribed, and sworn to before me this 1st day of July, 1876.

J. P. STRICKLER,
Notary Public.

"2*d Plea in Abatement.*"

In the Circuit Court of Wood County, State of West Virginia.

ANDREW S. CORE & B. S. COMPTON *vs.* JOHN F. VINAL.

In trespass on the case, &c.

The said defendants, Andrew S. Core and Benjamin S. Compton, in their own proper persons come and say: That this court ought not to have or take further cognizance of the said plaintiff's action aforesaid against them or either of them, because they say that at the time of the commencement of said action or before or since the said defendants or either of them were not and have not been residents of said county of Wood, but the said defendant Core was at that time, has been ever since, and is at the time of filing this plea a resident of the county of Ritchie, in said State of West Virginia, and the said defendant Compton was at that time, has been ever since, and is at the time of filing this plea a resident of the State of Michigan, beyond the limits of said State of West Virginia, and had not at that time or since, and has not at the time of filing
11 this plea, any estate or debts due him in said county of Wood, and that the cause of action for which said plaintiff's action aforesaid is brought, or any part thereof, did not arise in said county of Wood, but arose in said county of Ritchie, and this the said defendants are ready to verify.

Whereupon they pray judgment whether the court can or will take further cognizance of the action aforesaid.

ANDREW S. CORE,
BENJAMIN S. COMPTON,
By Counsel.

STATE OF WEST VIRGINIA, } *To wit:*
Ritchie County, }

Andrew S. Core, defendant named in the foregoing plea, being duly sworn, says that the facts and allegations therein contained are true, as he believes.

A. S. CORE.

Taken, sworn to, and subscribed before me this 3d day of July, 1876.

J. P. STRICKLER,
Notary Public.

And at another day, to wit, at a circuit court continued and held for Wood county, at the court-house thereof, on December 26th, 1876.

In Casi.

12 JOHN F. VINAL
vs.
ANDREW S. CORE and BENJAMIN S. COMPTON.

This day came the parties, by their attorneys; and thereupon the plaintiff's demurrer to the two several pleas in abatement filed in this cause by the said defendants was argued; and because it seems to the court that the said pleas and the matters therein contained are not sufficient in law to abate the plaintiff's writ, it is considered by the court that the said two several pleas be overruled; that the defendants to the plaintiff's declaration do answer further, and that the plaintiff do recover of the defendants his costs by him expended in this behalf—attorney's fee excepted.

And at another day, to wit, at a circuit court continued and held for Wood county, at the court-house thereof, September 20th 1878:

This day came again the parties, by their attorneys; and thereupon the defendants, by their attorney, for further plea say that they are not guilty in manner and form as in the plaintiff's declaration is alleged, and of this they put themselves upon the county, and the plaintiff doth the like, and issue is therein joined.

13 And at another day, to wit, at a circuit court continued and held for Wood county, at the court-house thereof, on March 20th, 1879:

This day came the parties, by their attorneys, and thereupon came a jury, to wit, J. W. Dobbins, S. R. Athey, V. B. Uhl, H. P. Samuels, Andrew Mehl, E. T. Drabosh, Jos. Jones, Arthur Edwards, Henry E. Hultz, Wm. Ashburn, John Toncray, and Wm. H. Guard, good and lawful men, who, being selected and drawn by ballot, as the law requires, were sworn to well and truly try the issue joined between John F. Vinal, pl't'f, and A. S. Core and B. S. Compton, defendants, and a true verdict render according to the evidence, and having heard the evidence in part, and there not being time to hear the whole evidence, are adjourned until to-morrow morning at 9 o'clock.

And at another day, to wit, at a circuit court continued and held for Wood county, at the court-house thereof, March 21st, 1879:

This day came again the parties, by their attorneys, and the jury empanneled and sworn in this cause on yesterday appeared persuant to their adjournment, and having heard the evidence in part, and there not being time to hear the whole of the evidence,
14 are adjourned until to-morrow morning at 9 o'clock.

And at another day, to wit, at a circuit court continued and held for Wood county, at the court-house thereof, March 21st, 1879:

This day came again the parties, by their attorneys, and the jury empannelled and sworn in this cause on yesterday appeared persuant to their adjournment, and having heard the evidence in part,

and there not being time to hear the whole of the evidence, are adjourned until to-morrow morning at 9 o'clock.

And at another day, to wit, at a circuit court continued and held for Wood county, at the court-house thereof, March 22d, 1879:

This day came again the parties, by their attorneys, and the jury empanneled and sworn in this cause on a former day of this term appeared persuant to their adjournment, and having heard the evidence in part, and there not being time to hear the whole of the evidence, are adjourned until Monday morning at 10 o'clock.

And at another day, to wit, at a circuit court continued and held for Wood county, at the court-house thereof, on March 24th, 1879:

15 This day came again the parties by their attorneys, and the jury empanelled and sworn in this cause on a former day of this term appeared persuant to their adjournment, and having heard the conclusion of the evidence and argument of counsel in part, and there not being time to hear the whole thereof, are adjourned until to-morrow morning at 9 o'clock.

And at another day, to wit, at a circuit court continued and held for Wood county, at the court-house thereof, on the 25th day of March, 1879:

This day came the parties by their attorneys, and the jury empanneled and sworn in this cause on a former day of this term appeared persuant to their adjournment, and having heard the argument of counsel in part, and there not being time to hear the whole argument, are adjourned until to-morrow mo'n'g at 9 o'clock.

And at another day, to wit, at a circuit court continued and held for Wood county, at the court-house thereof, March 26th, 1879:

This day came again the parties by their attorneys, and the jury empanneled and sworn in this cause on a former day of
16 this term appeared persuant to their adjournment, and, having heard the conclusion of argument of counsel, were sent out to consider of their verdict, and after some time returned into court, and, not having agreed upon a verdict, are adjourned until to-morrow morn'g at 9 o'clock.

And at another day, to wit, at a circuit court continued and held for Wood county, at the court-house thereof, March 27th, 1879:

This day came again the parties by their attorneys, and the jury empanneled and sworn in this cause on a former day of this term appeared persuant to their adjournment, and were sent out to consider further of their verdict, and after some time returned into court, and upon their oaths do say: We, the jury, find for the plaintiff, and assess his damages at ten thousand dollars. And thereupon the defendants, by their attorney, moved the court to suspend judgment on said verdict at this time, and judgment is accordingly so suspended.

And at another day, to wit, at a circuit court continued and held for Wood county, at the court-house thereof, April 19th, 1879:

17 This day came again the parties, by their attorneys, and — the motion of the defendants, made at a former day of this term, to set aside the verdict rendered in this cause and award them a new trial on the ground that the said verdict is contrary to the law and the evidence in the case, and on the further ground that the damages found by the said verdict are excessive. Upon consideration whereof the court is of opinion that as to said first ground the said verdict was not contrary to the law and evidence in the case, and the said motion as to the said first ground is overruled; and as to the said second ground, that the damages found by said verdict are excessive, the plaintiff, in open court, having elected to release the defendants — five thousand dollars, one half the damages aforesaid so ascertained by said verdict, the court is of opinion to overrule said motion upon said second ground. It is, therefore, considered by the court that the plaintiff recover of the said defendants one half of the damages assessed by the jury in their verdict aforesaid, with interest thereon from the 19th day of April, 1879, and his costs by him about his prosecution in this behalf expended.

Whereupon the defendants, by their attorney, tendered their three several bills of exceptions, numbered 1, 2, & 3, respectively,

18. to the opinion of the court during the progress of the trial, which said bills of exceptions were received, signed, and sealed by the court and ordered to be made a part of the record in this case.

On motion of the defendants, by their counsel, it is ordered that the effect of this judgment be suspended for sixty days upon their giving bond, with approved security, in the penalty of six thousand dollars, conditioned according to law.

Memo.

Bills of exceptions 1, 2, & 3 not made a part of this record.

By order of— W. S. SANDS,
Att'y for Def'ts.

Teste: O. M. CLEMENS, *Clerk.*

In Vacation.

Wood County Circuit Court.

WEST VIRGINIA, *To wit:*

CLERK'S OFFICE, *June 24th*, 1882.

At a supreme court of appeals held in Wheeling, in Ohio county, on the 14th day of May, 1881:

JOHN F. VINAL, Plaintiff Below, Defendant in Error,
vs.
A. S. CORE and B. S. COMPTON, Defendants Below, Plaintiffs in Error.

Upon a writ of error and supersedeas to a judgment of the

19 circuit court of Wood county rendered on the 19th day of April, 1879.

The court having maturely considered the transcript of the record of the judgment aforesaid, and the arguments of counsel thereon, is of opinion, for reasons stated in writing and filed with the record, that there is error in said judgment. It is therefore considered by the court that the judgment rendered in this cause by the circuit court of Wood county on the 19th day of April, 1879, be, and the same is hereby, set aside, reversed, and annulled, and that the plaintiffs in error recover against the defendant in error, John F. Vinal, their costs about the prosecution of their writ of error and supersedeas in this court in this behalf expended; and, this court proceeding to render such judgment in this case as the circuit court of Wood county should have rendered, the verdict of the jury in this case is hereby set aside and annulled and a new trial is awarded, the costs of the former trial to abide the event of the suit; and this cause is remanded to the circuit court of Wood county for further proceedings to be had therein according to law; which is ordered to be certified to the circuit court of Wood county.

A copy from the record.

Attest: A. S. LONG, *Clerk.*

20 JOHN F. VINAL, D. E., *vs.* A. S. CORE & B. S. COMPTON, P. E.

Costs in the Supreme Court of Appeals—Plaintiff in Error's Costs.

Clerk	$55 80
Printing record	60 35
Clerk of C't C't	25 40
Sheriff Shattuck	75
Attorney	30 00

Defendants in Errors' Costs.

Clerk	55

Attest: A. S. LONG, *Clerk.*

A copy.

Teste: O. M. CLEMENS, *Clerk.*

And now at this day, to wit, at a circuit court continued and held for Wood county, at the court-house thereof, August 24th, 1881:

This day B. S. Compton, one of the said defendants, filed his petition praying for a removal of the above-entitled cause into the circuit court of the United States for the district of West Virginia, which petition is accompanied by a bond with surety; and thereupon the said plaintiff, by his attorney, objected to the granting of the prayer of said petition on the ground that the same was improper, and the matter of said petition not sufficient to authorize the
21 removal of said cause, and because, as the records in this cause show, and to which reference is here now made, this cause was ready for trial at the September term, 1878, on the plea of the general issue, which was a trial term at which this action could have

been tried, and was continued from time to time until at the March term, 1879, of this court this action was tried at the bar of this court and judgment rendered therein, which judgment was afterwards reversed by the supreme court of appeals of this State and the cause remanded to this court for a new trial to be had thereon, and was placed on the docket of this court for trial; and, further, that because the controversy in said action is such that the cause cannot be tried severally between the plaintiff and the said petitioner, Compton, who is a non-resident of this State, sued jointly with said A. S. Core, who is a resident of this State.

Therefore the court, in consideration of the premises, doth refuse the prayer of said petitioner, and will proceed further in this cause here as it may be advised, and said petition is dismissed at the costs of the said B. S. Compton.

22 *Petition for Removal to the Circuit Court of the United States for the District of West Virginia.*

In the Circuit Court of the United States for the District of West Virginia.

JOHN F. VINAL *vs.* ANDREW S. CORE and BENJAMIN S. COMPTON.

To the Honorable James M. Jackson, judge of the circuit court of Wood county, W. Va.:

Your petitioner respectfully shows to this honorable court that the matter and amount in dispute in the above-entitled cause exceed, exclusive of costs, the sum or value of five hundred dollars; that your petitioner was at the time of the commencement of this suit, and still is, a citizen of the State of Michigan, and that the plaintiff, John F. Vinal, and the defendant, Andrew S. Core, were, and each of them was, at the time of the commencement of this suit, citizens of the State of West Virginia.

Your petitioner further states that in the said suit above mentioned there is a controversy which is wholly between citizens of different States, and which can be fully determined as between them, to wit, a controversy between said petitioner and said John F. Vinal.

23 And your petitioner offers herewith a good and sufficient bond with good security for his entry in said circuit court of the United States for the District of West Virginia on the first day of its next session a copy of the record in this case, and for paying all costs that may be awarded by said circuit court, if said court shall hold that said suit was wrongfully or improperly removed thereto.

And your petitioner prays this honorable court to proceed no further herein except to make the order of removal required by law, and to accept said surety and bond, and to cause the record herein to be removed to said circuit court of the United States for the district of West Virginia; and as in duty bound he will ever pray, &c.

B. S. COMPTON.

WALTER S. SANDS,
Att'y for Petitioner.

STATE OF MICHIGAN, *County of Monroe:*

I, Benjamin S. Compton, being duly sworn, do say that I am one of the defendants in the cause entitled in the foregoing petition for removal, and am the B. S. Compton therein named; that I
24 have read the foregoing petition signed by me, and I know the contents thereof, and that the statements and allegations therein contained are true, as I verily believe.

B. S. COMPTON.

Subscribed and sworn to by the said B. S. Compton, in my presence, before me this 15th day of Aug., 1881.

JOHN S. NOBLE,
Notary Public.

STATE OF MICHIGAN, } ss:
County of Monroe, }

B. S. Compton, the petitioner named in the foregoing petition, being duly sworn, says that the facts and allegations therein contained, so far as they are stated on his own knowledge, are true, and that so far as they are stated upon information he believes them to be true.

B. S. COMPTON.

Taken, sworn, and subscribed to before me this 15th day of August, 1881.

JOHN S. NOBLE.

STATE OF MICHIGAN, } ss:
County of Monroe, }

I, Constant Luce, deputy clerk of said county and clerk of the
25 circuit court in and for said county of Monroe, do hereby certify that John S. Noble, whose name is subscribed to the certificate or proof of acknowledgment of the annexed instrument and therein written, is and was, at the time of taking such proof or acknowledgment, a notary public for said county, duly commissioned and qualified and duly authorized to take the same; and, further, that I am well acquainted with the handwriting of said notary public and verily believe that his signature to the said certificate or proof of acknowledgment is genuine. I further certify that said instrument is executed and acknowledged according to the laws of this State.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court, at the city of Monroe, this 15th day of August, A. D. 1881.

CONSTANT LUCE,
Dep'ty Clerk.

"Petitioner's Bond."

Know all men by these presents that we, Benjamin S. Compton and John O'Brien, are held and firmly bound unto John F. Vinal

in the penal sum of five hundred dollars, to the payment whereof, well and truly to be made unto the said John F. Vinal, his
26 executors, administrators, and assigns, we bind ourselves, our and each of our heirs, personal representatives, and assigns, jointly and severally, by these presents.

Sealed with our seals and dated the 15th day of August, 1881.

The condition of the above obligation is such that whereas the above-bounden B. S. Compton has petitioned the circuit court of Wood county, State of West Virginia, for the removal of a certain cause pending therein, wherein John F. Vinal is plaintiff and the said Benjamin S. Compton and Andrew S. Core are defendants, to the circuit court of the United States for the district of West Virginia:

Know if the said Benjamin S. Compton shall enter into the said circuit court of the United States for the district of West Virginia, on the first day of its next session, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by the said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise, to remain in full force and virtue.

B. S. COMPTON. [SEAL.]
JOHN O'BRIEN. [SEAL.]

27 STATE OF MICHIGAN, } ss:
Monroe County, }

I, John S. Noble, a notary public for said county, certify that B. S. Compton, whose name is signed to the writing above, bearing date on the 15th day of August, 1881, has this day acknowledged the same before me in my said county.

Given under my hand this 19th day of August, 1881.

JOHN S. NOBLE.

STATE OF MICHIGAN, } ss:
County of Monroe, }

I, Constant Luce, deputy clerk of said county and clerk of the circuit court in and for said county of Monroe, do hereby certify that John S. Noble, whose name is subscribed to the certificate or proof of acknowledgement of the annexed instrument therein written, is, and was at the time of taking such proof or acknowledgement, a notary public for said county, duly commissioned and qualified, and duly authorized to take the same; and, further, that I am well acquainted with the handwriting of said John S. Noble, and verily believe that his signature to the said certificate or proof of
28 acknowledgement is genuine. I further certify that said instrument is executed and acknowledged according to the laws of this State.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court at the city of Monroe this 19th day of August, A. D. 1881.

[SEAL.]

CONSTANT LUCE,
Dep'ty Clerk.

WOOD COUNTY CIRCUIT COURT, CLERK'S OFFICE.

Before me, this day, personally appeared John O'Brien, whose name is signed to the writing above, bearing date on the 15th day of August, 1881, and acknowledged the same; and the said John O'Brien, being by me duly sworn, did depose and say that he is a resident of the county of Ritchie, State of West Virginia, and that he is worth at least the sum of five hundred dollars over and above all his just debts and liabilities, and debts for which he is security and property exempt from execution.

Given under my hand this 22d day of August, 1881.

E. W. CLOUSTON,
Deputy Clerk,
For O. M. CLEMENS,
Clerk C't C't, Wood County, West Virginia.

29 STATE OF WEST VIRGINIA, *Wood County,* } *To wit:*

I, O. M. Clemens, clerk of the circuit court of Wood county, do hereby certify that the foregoing is a true, complete, and correct transcript (except bills of exceptions Nos. 1, 2, & 3) of the record in a cause late pending in said court, wherein John F. Vinal was plaintiff, and A. S. Core and B. S. Compton were defendants.

Given under my hand as clerk, and the seal of said court, this 22d day of October, 1881.

[SEAL.] O. M. CLEMENS, *Clerk.*

And on another day, to wit, on the 11th day of February, A. D. 1882, at a circuit court of the United States for the district of West Virginia, continued and held at Parkersbu-g, in said district, the following order was made and entered of record, to wit:

JOHN F. VINAL *vs.* A. S. CORE & B. S. COMPTON.

In case removed from Wood county.

For reasons appeari-g to the court the — to remand this cause made on a former day of this term is continued until the
30 next regular term of this court.

And on another day, to wit, at a circuit court of the United States for the district of West Virginia, continued and held at Parkersburg, in said district, on the 27th day of January, A. D. 1883, among others the following order was made.

JOHN F. VINAL *vs.* A. S. CORE & B. S. COMPTON.

In case removed from Wood county.

This day came the parties by their attorneys, and the motion of the plaintiff to remand this cause to the circuit court of Wood county, West Virginia, being fully argued, for reasons appear-ng to the court in its opinion in writing filed in this cause, it is ordered that this cause be, and the same is, remanded to the circuit court of Wood county, West Virginia.

And on another day, to wit, on the 3d day of February, A. D. 1883, the following order was made and entered of record, to wit:

JOHN F. VINAL *vs.* A. S. CORE & B. S. COMPTON.

In case removed from Wood Co., West Virginia.

31 This day came again the parties, by their attorneys, and the defendants pray for a writ of error from and a supersedeas to the order made in this cause on the 27th day of January, 1883, remanding said cause to the circuit court of Wood county, West Virginia, for further proceedings to be had therein, and to them the said writ of error and supersedeas is granted, to take effect upon the defendants, or either of them, executing a bond in the penalty of three hundred dollars before the clerk of this court, conditioned as the law directs.

The writ of error, bond for costs, and citation are in words and figures following, to wit:

32 The United States of America to John F. Vinal, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of West Virginia, wherein Benjamin S. Compton and Andrew S. Core are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgement rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the United States, this first day of March, in the year of our Lord one thousand eight hundred and eighty-three.

L. B. DELLICKER,
Clerk Circuit Court U. S., Dist. W. Va.

32½ *Marshal's Return.*

Executed by handing an office copy of the within citation to John A. Hutchinson, attorney for J. F. Vinal, he, the said J. F. Vinal, being at the time out of my district. Executed on the 19th day of March, 1883, in Parkersburg, district of West Virginia.

GEO. W. ATKINSON, *U. S. M.*,
By G. B. GIBBONS, *Deputy.*

33 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of West Virginia, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court, before

you, between John F. Vinal against A. S. Core and Benjamin S. Compton, a manifest error hath happened, to the great damage of the said A. S. Core and Benjamin S. Compton, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of March next in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the first day of March, in the year of our Lord one thousand eight hundred and eighty-three.

L. B. DELLICKER,
Clerk Circuit Court U. S., Dist. W. Va.

Allowed by—

_____ _____.

Endorsed: Filed in clerk's office this 1st day of March, 1883. L. B. Dellicker, clerk.

34 *Bond.*

Know all men by these presents that we, A. S. Core, B. S. Compton, and the West Virginia Oil and Oil Land Company, are held and firmly bound unto John F. Vinal in the full and just sum of three hundred dollars, to be paid to the said John F. Vinal, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this first day of March, in the year of our Lord one thousand eight hundred and eighty-three.

Whereas lately, at a circuit court of the United States for the district of West Virginia, in a suit depending in said court, between John F. Vinal, plaintiff, and A. S. Core and B. S. Compton, defendants, judgment was rendered against the said A. S. Core and B. S. Compton, and the said A. S. Core and B. S. Compton having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said John F. Vinal, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said A. S. Core and B. S. Compton shall prosecute said writ of error to effect, and answer all damages and costs if they fail to make their

plea good, then the above obligation to be void; else to remain in full force and virtue.

A. S. CORE. [SEAL.]
B. S. COMPTON. [SEAL.]
WEST VA., O. & O. L. CO.
B. S. COMPTON, *Pres.* [SEAL.]

Sealed and delivered in presence of—
L. B. DELLICKER.

Approved by—
J. J. JACKSON, *D. Judge.*

Endorsed: Filed in office this 1st day of March, 1883. L. B. Delliker, clerk.

35 I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, do certify that the foregoing is a full, complete, and true copy of the record in the case of John F. Vinal against Andrew S. Core and Benjamin S. Compton, lately pending in this court, from the records and files of my office.

In testimony whereof I hereunto set my hand and the seal of said court, at Parkersburg, in said district, this 25th day of August, A. D. 1883.

[Seal Circuit Court United States, District West Virginia. Parkersburg, W. Va.]

L. B. DELLICKER,
Clerk Circuit Court U. S., Dist. W. Va.

Endorsed on cover: West Virginia C. C. U. S. No. 422. A. S. Core and Benjamin S. Compton, plaintiffs in error, *vs.* John F. Vinal. Filed 13th October, 1883.

117-347

Supreme Court of the U. S.

OCTOBER TERM, 1885.

No. 422.

ANDREW S. CORE AND BENJAMIN S. COMPTON,
PLAINTIFFS IN ERROR.

vs.

JOHN F. VINAL, DEFENDANT IN ERROR.

This is a writ of error to the Circuit Court for the District of West Virginia, to review an order of that court passed on the 27th day of January, 1883, on motion of defendant in error, remanding this cause to the Circuit Court of Wood County, West Virginia, whence it had been removed on petition of Benjamin S. Compton, one of the plaintiffs in error, and one of the defendants below.

MOTION TO ADVANCE.

And now comes the defendant in error, by his attorney, and moves the court to advance this cause for hearing in accordance with the provisions of the thirty-second rule of this court.

C. C. COLE,
Attorney for Defendant in Error.

Office Supreme Court U. S.
FILED.
OCT 26 1885
JAMES H. McKENNEY.
CLERK.

117-347

IN THE

Supreme Court of the United States.

ANDREW S. CORE AND BENJAMIN S. COMPTON,
PLAINTIFFS IN ERROR,
vs
JOHN F. VINAL, DEFENDANT IN ERROR.

UPON A WRIT OF ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

MOTION TO DISMISS.

And now comes the defendant in error by his attorney, and moves the court to dismiss the writ of error in this cause, on the following grounds:

First, The the court below never had jurisdiction of said action, and this court has none.

Second, Because on the death of the said Benjamin S. Compton the said action abated as to him, leaving the other plaintiff in error the sole defendant, and a citizen of the same State as the defendant in error.

C. C. COLE,
Attorney for Defendant in Error

MOTION TO AFFIRM.

And now comes the defendant in error by his attorney, and moves the court to affirm the judgment of the court

below, remanding said case to the Circuit Court of Wood County, on the ground, that although this court may have jurisdiction to review the said judgment, the question upon which the jurisdiction depends is so frivolous as not to need further argument, and it is manifest that the writ was sued for delay only.

C. C. COLE,
Attorney for the Defendant in Error.

To R. S. Blair, Esq., Attorney for Plaintiff in Error:

Take notice that on the 26th day of October, 1885, at the opening of the session of the Supreme Court of the United States, or as soon thereafter as counsel can be heard, the foregoing motions will be called to the attention of the court, and it prayed to grant the same

C. C. COLE,
Attorney for the Defendant in Error.

BRIEF IN SUPPORT OF THE FOREGOING MOTIONS.

Statement of the Case.

This action was brought by the defendant in error against the plaintiffs in error in the Circuit Court of Wood County, West Virgina, on the first Monday in July, 1876. It is a special action on the case charging the plaintiffs in error jointly with instituting and carrying on a malicious prosecution against defendant in error, and claiming damages therefor. The declaration is in the usual form.

On the 20th day of Sept. 1878, after demurrer had been sustained to other pleas of the plaintiffs in error they filed a joint plea of not guilty and issue was immediately joined thereon.

On the 20th day of March, 1879, the trial of the cause commenced in the last named court, and, on the 27th of the same month resulted in a verdict for defendant in error for $10,000. On a motion for a new trial in that court the presiding Judge deeming the verdict excessive, required the defendant in error to remit one half the damages, or submit to a new trial. A remititur of $5,000 was thereupon filed, and judgment was entered for the balance. The plaintiffs in error thereupon removed the case by writ of error to the Supreme Court of Appeals, of West Virginia, where, on the 14th day of May, 1881, the judgment below was reversed on grounds merely technical, and the case remanded to the Circuit Court of Wood County, for a new trial to be had. The case is reported in the 18 W. Va., Reports begining at page one.

On the 14th day of August, 1881, and before any other steps had been taken or trial of the cause had, in the Circuit Court of Wood County, and without any change in the pleadings whatever, plaintiff in error Compton filed a petition in the last mentioned court praying a removal of the cause into the Circuit Court of the United States for the District of West Virginia. The following is a copy of the petition as found in the Record pp. 22 to 25.

JOHN F. VINAL,
vs.
ANDREW S. CORE and
BENJAMAN S. COMPTON,

PETITION FOR REMOVAL TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

To the Honorable James M. Jackson, Judge of the Circuit Court of Wood County:

Your petitioner respectfully shows to this Honorable Court, that the matter and amount in dispute in the above

entitled cause, exceeds, exclusive of costs, the sum or value of five hundred dollars. That your petitioner was at the time of the commencement of this suit, and still is, a citizen of the State of Michigan, and that the plaintiff John F. Vinal, and the defendant Andrew S. Core were, and each of them was, at the time of the commencement of this suit, citizens of the State of West Virginia.

Your petition further states that in the said court above mentioned there is a controversy which is wholly between citizens of different States, and which can be fully determined as between them, to wit, a controversy between petitioner and said John F. Vinal.

And your petitioner offers herewith a good and sufficient bond with good security for his entering in the said Circuit Court of the United States for the District of West Virginia, on the first day of its next session, a copy of the record in this case, and for paying all costs that may be awarded by said Circuit Court if said court shall hold that said suit was wrongfully or improperly removed thereto.

And your petioner prays this Honorable Court to proceed no further herein, except to make the order of removal required by law, and to accept said surety and bond, and to cause the record herein to be removed to said circuit Court of the United States for the District of West Virgina, and as in duty bound will ever pray, &c.

B. S. COMPTON.

WALTER S. SANDS,
Attorney for Petitioner.

STATE OF MICHIGAN, }
COUNTY OF MONROE. }

I, Benjamin S. Compton, being duly sworn, do say that I am one of the defendants in the cause entitled in the foregoing petition for removal, and am the Benj. S. Compton therein named; that I have read the foregoing petition signed by me, and I know the contents thereof, and that the statements and allegations therein contained are true, as I verily believe.

B. S. COMPTON.

Subscribed and sworn to, by the said B. S. Compton, in my presence, before me, this 15th day of August, 1881.

JOHN S. NOBLE,
Notary Public.

STATE OF MICHIGAN, } *ss:*
COUNTY OF MONROE. }

B. S. Compton the petitioner named in the foregoing petition being duly sworn, says that the facts and allegations therein contained, so far as they are stated on his own knowledge, are true, and that so far as stated upon information, he believes them to be true.

B. S. COMPTON.

Taken, sworn and subscribed to, before me, this 15th day of August, 1881.

JOHN S. NOBLE.

There is attached proper evidence of the notorial character of the officer.

The petition was accompanied with the usual bond in proper form.

On the day of the filing of this petition the Circuit Court of Wood County made an order denying the prayer of the petition.

On the 10th day of January, 1882, the plaintiffs in error presented a copy of the record to the Circuit Court of the United States for the district of West Virginia, and moved the court to docket the case, which was done, and the defendant in error immediately made a motion to remand the case (Record, p. 1) which stood in this condition until the 27th of January, 1883, when the court below entered the following order remanding the case, to wit:

JOHN F. VINAL.
vs.
A. S. CORE and B. S. COMPTON.

IN CASE REMOVED FROM WOOD COUNTY.

This day came the parties by their Attorneys, and the motion of the plaintiff to remand this cause to the Circuit Court of Wood County, West Virginia, being fully argued, for reasons appearing to the Court in its opinion in writing filled in this cause, it is ordered that this cause be and the same is remanded to the Circuit Court of Wood County, West Virginia. (30)

To reverse this order the writ of error was seud out, both Core and Compton joining in the writ as plaintiff in error.

The opinion of Judge Bond referred to in the order is as follows:

IN CIRCUIT COURT OF U. S. DIST. WEST VA.

JOHN V. VINAL,
vs.
A. S. CORE and B. S. COMPTON.

This is a motion to remand this cause to the Circuit Court of Wood County, West Va , whence it was re-

moved upon the affidavit and motion of the said defendant, Compton, who alleges he is a citizen of the State of Michigan and was at the time of the commencement of the action.

The facts shown by the record are that the suit was for malicious prosecution and was commenced in July, 1876 The parties were sued jointly and filed joint pleas of not guilty. On the March, 1879, a jury was sworn, which, after hearing the evidence rendered a verdict against the defendants. The cause went by writ of error to the Supreme Court of Appeals of West Virginia, which court reversed the judgment of the court below and awarded a new trial. The cause awaiting the new trial, Compton filed his motion to remove to this court, on the ground that there was a separable controversy between the plain- and him and his co-defendant, Core. It is not necessary, so far as this motion is concerned, to determine whether there was or not such a separable controversy as is provided for in the act of 1866, or that of 1875, relating to the removal of causes. The Supreme Court of the U. S. has determined in Hyde and Ruble (104 U. S.) that the second section of the act of 1866 is repealed by the act of March 3rd. 1875. The former act permitted a defendant having such a separable controversy to remove his cause before trial or a final hearing, while the act of 1875, requires that he shall move to remove his cause at the term at which it could be first tried and before the trial thereof. The motion to remove in this cause was not made until there had been a trial below, a verdict and an appeal to the Supreme Court of Appeals and an order for a new trial. Whether the cause was properly tried at the term when it was heard is one thing. The Supreme Court said it was not, but that it could have been tried

properly there is no doubt. The motion therefore comes too late under the act of 1875, and the cause must be remanded.

I, L. B. Dellecker, certify that the forgoing is a true copy of the opinion of Hugh L. Bond filed in this cause and referred to in the order of January, 27th, 1883, remanding the cause.

J. B. DELLECKER, Clerk.
C. C. U. S. Dist., W. Va.

The writ of error was sued out on the first day of March, 1883, returnable to the Oct, term following.

The case was docketed in this court on the 18th day of Oct. 1883.

On the 12th day of Dec. 1884, the deposition of John O'Brien, taken on notice to the plaintiff in error Core, was filed in this court proving the death of plaintiff in error Benjamin S. Compton, in the early part of July, 1883.

POINTS.

It is submitted

First upon the motion to dismiss,

(a) That the court below had no jurisdiction, even if there was a separable controversy, the motion for removal not coming in time, and therefore, this court has no jurisdiction.

(b) Even if there was jurisdiction while Compton was living, after his death and the abatement of the action as to him there could be none, the remaining parties to the suit both being residents of the same State.

(c) It is proper to prove facts affecting the jurisdiction of this court, not found in the record, by affidavits or depositions.

Dakota County v. Glidden, 113, U. S., 222.

Second. Upon the motion to affirm.

(a.) If it should be held that this court may take jurisdiction for the purpose of determining whether the court below had jurisdiction or not, then the motion to affirm should prevail, it being too plain for argument, under the decision of this court, cited by Judge Bond in his opinion that the motion for removal came too late.

Hyde v. Ruble, 104, U. S., 407 and authority there cited.

C. C. COLE,

Attorney for Defendant in Error.

Office Supreme Court U. S.
FILED
MAR 8 1886
JAMES H. McKENNEY,
CLERK.

117-347

Supreme Court of the U. S.

OCTOBER TERM, 1885.

ANDREW S. CORE AND BENJAMIN S. COMPTON, PLAINTIFFS' IN ERROR
vs
JOHN F. VINAL, DEFENDANT IN ERROR.

No 422

Notice of intention to submit upon printed briefs.

TO ROBERT S. BLAIR,
Attorney for the Plaintiffs in error.

You are hereby notified that an order has been made by the court in the above styled cause, advancing the same for hearing upon the merits, in accordance with the provisions of Rule 32, of the Rules of Practice of said court, and that on the first day of March, 1886, at the meeting of the court on that day, said cause will be submitted to the court upon its merits upon printed briefs, as provided in the rule aforesaid, and the following brief herewith furnished you, will be relied upon on behalf of the defendant in error.

C. C. COLE,
Attorney for Defendant in Error.

BRIEF IN BEHALF OF DEFENDANT IN ERROR.

Statement of the Case.

This action was brought by the defendant in error against the plaintiffs in error in the Circuit Court of Wood County, West Virginia, on the first Monday in July, 1876. It is a special action on the case charging the plaintiffs in error jointly with instituting and carrying on a malicious prosecution against defendant in error, and claiming damages therefor. The declaration is in the usual form.

On the 20th day of Sept. 1878, after demurrer had been sustained to other pleas of the plaintiffs in error, they filed a joint plea of not guilty and issue was immediately joined thereon.

On the 20th day of March, 1879 the trial of the cause commenced in the last named court, and, on the 27th of the same month resulted in a verdict for defendant in error for $10,000. On a motion for a new trial in that court the presiding Judge, deeming the verdict excessive, required the defendant in error to remit one half the damages, or submit to a new trial. A remititur of $5,000 was thereupon filed, and judgment was entered for the balance. The plaintiffs in error thereupon removed the case by writ of error to the Supreme Court of Appeals of West Virginia, where, on the 14th day of May, 1881, the judgment below was reversed on grounds merely technical, and the case remanded to the Circuit Court of Wood County, for a new trial to be had. The case is reported in the 18 W. Va. Reports, beginning at page one.

On the 14th day of August, 1881, and before any other steps had been taken or trial of the cause had, in the Circuit Court of Wood County, and without any change in the pleadings whatever, plaintiff in error Compton filed a petition in the last mentioned court, praying a re-

moval of the cause into the Circuit Court of the United States for the District of West Virginia.

On the day of the filing of this petition, the Circuit Court of Wood County made an order denying the prayer of the petition.

On the 10th day of Jnauary. 1882, the plaintiffs in error presented a copy of the record to the Circuit Court of the United States for the District of West Virginia, and moved the court to docket the case, which was done; and the defendant in error immediately made a motion to remand the case, which stood in this condition until the 27th of January, 1883, when the court below entered the following order remanding the case, to wit:

This day came the parties by their attorneys, and the motion of the plaintiff to remand this cause to the Circuit Court of Wood County, West Virginia, being fully argued, for reasons appearing to the Court in its opinion in writing filed in this cause, it is ordered that this cause be and the same is remanded to the Circuit Court of Wood County, West Virginia.

To reverse this order the writ of error was sued out, both Core and Compton joining in the writ as plaintiffs' in error.

POINTS.

First. The motion to remove this cause was made too late. It had been tried in the Circuit Court of Wood Co., a verdict rendered, and an appeal taken to the Supreme Court of Appeals of West Virginia, and an order made for a new trial. The petition for removal, therefore was not filed at, or before the term at which the case could first have been tried, and therefore came too late by the very terms of the Act of March 3rd; 1875.